

Senate Bill 521

By: Senator Smith of the 52nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 17, 37, and 42 of the Official Code of Georgia Annotated, relating,
2 respectively, to crimes and offenses, criminal procedure, mental health, and penal
3 institutions, so as to provide for enhanced penalties and civil commitment for certain sex
4 offenses when aggravating circumstances are found beyond a reasonable doubt; to provide
5 for legislative findings; to change punishment provisions relating to rape; to change
6 punishment provisions relating to sodomy and aggravated sodomy; to change punishment
7 provisions relating to child molestation and aggravated child molestation; to change
8 punishment provisions relating to aggravated sexual battery; to provide for lesser punishment
9 for certain sexual offenses committed by persons of certain ages; to change certain provisions
10 relating to punishment of serious violent offenders; to provided for enhanced penalties for
11 certain sex offenses; to provide for notice of enhanced punishment; to provide for bifurcated
12 proceedings if enhanced penalties are sought and practice and procedure related thereto; to
13 provide for aggravating circumstances; to provide for involuntary civil commitment of
14 sexually violent predators; to provide for legislative intent; to provide for definitions; to
15 establish multidisciplinary teams; to provide for notice to prosecuting attorneys and
16 multidisciplinary teams of the release of persons convicted of sexually violent offenses; to
17 require certain information to be provided to certain persons; to provide for practice and
18 procedure of civil commitment; to provide for circumstances where a person is released from
19 total confinement; to provide for time limitations on assessment, notification, and filing a
20 petition to hold a person in custody; to provide for the contents of the civil commitment
21 petition; to provide for the determination of probable cause, hearing, and evaluation; to
22 provide for the Department of Human Resources to enter into contracts for facilities and
23 services related to civil commitment; to provide for rules of procedure and evidence; to
24 provide for trial proceedings, the right to counsel and experts, and jury trials; to provide for
25 indigent persons to have the right to counsel and other experts; to provide for the
26 commitment procedure, mistrials, housing, and counsel and costs in indigent appellate cases;
27 to provide for examinations, notice, and court hearings for release of committed persons; to

1 provide for the burden of proof; to provide authorization for persons to petition for release
2 and the procedure therefor; to provide for rights of persons committed; to provide for release
3 of records to agencies, multidisciplinary teams, and the prosecuting attorney; to provide for
4 the right of habeas corpus; to provide for constitutional considerations; to provide for
5 immunity from civil liability; to provide for applicability; to provide for notice to victims of
6 release of persons committed as sexually violent predators; to provide for penalties for escape
7 from civil commitment; to provide for subsistence fees and costs of treatment; to provide for
8 program costs; to provide for establishment of rules; to provide for quarterly reports; to
9 provide for other related matters; to provide for an effective date and applicability; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 The General Assembly finds that a small but extremely dangerous number of sexually violent
14 predators exist who generally have antisocial personality features which are unamenable to
15 existing mental illness treatment modalities, and those features render them likely to engage
16 in criminal, sexually violent behavior. The General Assembly further finds that the
17 likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence
18 is high. The existing involuntary commitment procedures in Georgia for the treatment and
19 care of mentally ill persons are inadequate to address the risk these sexually violent predators
20 pose to society. The General Assembly further finds that the prognosis for rehabilitating
21 sexually violent predators in a prison setting is poor; the treatment needs of this population
22 are very long term; and the treatment modalities for this population are very different from
23 the traditional treatment modalities for people appropriate for commitment under current law.
24 It is therefore the intent of the legislature to create a civil commitment procedure for the
25 long-term care and treatment of sexually violent predators.

26 **SECTION 2.**

27 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
28 amended by striking Code Section 16-6-1, relating to rape, and inserting in lieu thereof the
29 following:

30 "16-6-1.

31 (a) A person commits the offense of rape when he has carnal knowledge of:

32 (1) A female forcibly and against her will; or

33 (2) A female who is less than ten years of age.

1 Carnal knowledge in rape occurs when there is any penetration of the female sex organ by
2 the male sex organ. The fact that the person allegedly raped is the wife of the defendant
3 shall not be a defense to a charge of rape.

4 (b) A person convicted of the offense of rape shall be punished by death, by imprisonment
5 for life without parole, by imprisonment for life, or by imprisonment for not less than ten
6 nor more than 20 years. Any person convicted under this Code section shall, in addition,
7 be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1,
8 17-10-6.2, and 17-10-7.

9 (c) When evidence relating to an allegation of rape is collected in the course of a medical
10 examination of the person who is the victim of the alleged crime, the law enforcement
11 agency investigating the alleged crime shall be responsible for the cost of the medical
12 examination to the extent that expense is incurred for the limited purpose of collecting
13 evidence."

14 SECTION 3.

15 Said title is further amended by striking Code Section 16-6-2, relating to sodomy and
16 aggravated sodomy, and inserting in lieu thereof the following:

17 "16-6-2.

18 (a)(1) A person commits the offense of sodomy when he or she performs or submits to
19 any sexual act involving the sex organs of one person and the mouth or anus of another.

20 (2) A person commits the offense of aggravated sodomy when he or she commits
21 sodomy with force and against the will of the other person or when he or she commits
22 sodomy with a person who is less than ten years of age. The fact that the person allegedly
23 sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated
24 sodomy.

25 (b)(1) Except as provided in paragraph (2) of this subsection, a A person convicted of
26 the offense of sodomy shall be punished by imprisonment for not less than one nor more
27 than 20 years.

28 (2) If the victim is 14 or 15 years of age and the person convicted of sodomy is no more
29 than three years older than the victim, such person shall be guilty of a misdemeanor.

30 (3) A person convicted of the offense of aggravated sodomy shall be punished by
31 imprisonment for life or by imprisonment for not less than ten nor more than 30 years.
32 Any person convicted under this Code section of the offense of aggravated sodomy shall,
33 in addition, be subject to the sentencing and punishment provisions of Code Sections
34 17-10-6.1, 17-10-6.2, and 17-10-7.

(c) When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the person who is the victim of the alleged crime, the law enforcement agency investigating the alleged crime shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence."

SECTION 4.

Said title is further amended by striking Code Section 16-6-4, relating to child molestation and aggravated child molestation, and inserting in lieu thereof the following:

"16-6-4.

(a) A person commits the offense of child molestation when he or she does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

~~(b)(1) Except as provided in paragraph (2) of this subsection, a~~ A person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-7. ~~Upon such first conviction of the offense of child molestation, the judge may probate the sentence; and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. However, if the judge finds that such probation should not be imposed, he or she shall sentence the defendant to imprisonment; provided, further, that upon a defendant's~~ Upon a defendant being incarcerated on a conviction for ~~such~~ a first offense, the Department of Corrections shall provide counseling to such defendant. Upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Section 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment. Adjudication of guilt or imposition of sentence for a conviction of a second or subsequent offense of child molestation, including a plea of nolo contendere, shall not be suspended, probated, deferred, or withheld.

(2) If the victim is 14 or 15 years of age and the person convicted of a first offense of child molestation is no more than three years older than the victim, such person shall be guilty of a misdemeanor.

(c) A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy.

(d)(1) Except as provided in paragraph (2) of this subsection, a ~~A~~ person convicted of the offense of aggravated child molestation shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of aggravated child molestation shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1, 17-10-6.2, and 17-10-7.

(2) A person convicted of the offense of aggravated child molestation when:

(A) The victim is 14 or 15 years of age;

(B) The person so convicted is no more than three years older than the victim; and

(C) The basis of the charge of aggravated child molestation involves an act of sodomy

shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.1.

~~(2) The court sentencing a person who has been convicted of a first offense of aggravated child molestation when the victim is 16 years of age or younger at the time of the offense is authorized to require, before sentencing, that the defendant undergo a psychiatric evaluation to ascertain whether or not medroxyprogesterone acetate chemical treatment or its equivalent would be effective in changing the defendant's behavior. If it is determined by a qualified mental health professional that such treatment would be effective, the court may require, as a condition of probation and upon provisions arranged between the court and the defendant, the defendant to undergo medroxyprogesterone acetate treatment or its chemical equivalent which must be coupled with treatment by a qualified mental health professional. In case of a person sentenced to probation who is required to undergo such treatment or its chemical equivalent and is in the custody of a law enforcement agency or confined in a jail at the time of sentencing, when he or she becomes eligible for probation, such person shall begin medroxyprogesterone acetate treatment and counseling prior to his or her release from custody or confinement. A person sentenced to probation who is required to undergo such treatment and who is not in the custody of a law enforcement agency or confined in a jail at the time of sentencing shall be taken into custody or confined until treatment can begin. Additional treatment may continue after such defendant's release from custody or confinement until the defendant demonstrates to the court that such treatment is no longer necessary. No such treatment shall be administered until such person has been fully informed of the side effects of hormonal chemical treatment and has consented to the treatment in writing.~~

~~The administration of the treatment shall conform to the procedures and conditions set out in subsection (c) of Code Section 42-9-44.2.~~

~~(3) Any physician or qualified mental health professional who acts in good faith in compliance with the provisions of this Code section and subsection (c) of Code Section 42-9-44.2 in the administration of treatment or provision of counseling provided for in this Code section shall be immune from civil or criminal liability for his or her actions in connection with such treatment or counseling."~~

SECTION 5.

Said title is further amended by striking Code Section 16-6-22.2, relating to aggravated sexual battery, and inserting in lieu thereof the following:

"16-6-22.2.

(a) For the purposes of this Code section, the term 'foreign object' means any article or instrument other than the sexual organ of a person.

(b) A person commits the offense of aggravated sexual battery when he or she intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.

(c) A person convicted of the offense of aggravated sexual battery shall be punished by imprisonment for not less than ten nor more than 20 years. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1, 17-10-6.2, and 17-10-7."

SECTION 6.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by striking Code Section 17-10-6.1, relating to punishment for serious violent offenders, and inserting in lieu thereof the following:

"17-10-6.1.

(a) As used in this Code section, the term 'serious violent felony' means:

(1) Murder or felony murder, as defined in Code Section 16-5-1;

(2) Armed robbery, as defined in Code Section 16-8-41;

(3) Kidnapping, as defined in Code Section 16-5-40;

(4) Rape, as defined in Code Section 16-6-1;

(5) Aggravated child molestation, as defined in subsection (c) of Code Section 16-6-4, unless subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4;

(6) Aggravated sodomy, as defined in Code Section 16-6-2; or

(7) Aggravated sexual battery, as defined in Code Section 16-6-22.2.

1 (b)(1) Notwithstanding any other provisions of law to the contrary, any person convicted
2 of a serious violent felony as defined in paragraphs (2) through (7) of subsection (a) of
3 this Code section shall be sentenced to a mandatory minimum term of imprisonment of
4 ten years and no portion of the mandatory minimum sentence imposed shall be
5 suspended, stayed, probated, deferred, or withheld by the sentencing court and shall not
6 be reduced by any form of pardon, parole, or commutation of sentence by the State Board
7 of Pardons and Paroles.

8 (2) No person convicted of a serious violent felony ~~as defined in subsection (a) of this~~
9 ~~Code section~~ shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of
10 Title 42, relating to probation for first offenders, or any other provision of Georgia law
11 relating to the sentencing of first offenders. The State of Georgia shall have the right to
12 appeal any sentence which is imposed by the superior court which does not conform to
13 the provisions of this subsection in the same manner as is provided for other appeals by
14 the state in accordance with Chapter 7 of Title 5, relating to appeals or certiorari by the
15 state.

16 (c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a first
17 conviction of a serious violent felony in which the defendant has been sentenced to life
18 imprisonment, that person shall not be eligible for any form of parole or early release
19 administered by the State Board of Pardons and Paroles until that person has served a
20 minimum of 14 years in prison. The minimum term of imprisonment shall not be reduced
21 by any earned time, early release, work release, leave, or other sentence-reducing
22 measures under programs administered by the Department of Corrections.

23 (2) For a first conviction of a serious violent felony in which the defendant has been
24 sentenced to death but the sentence of death has been commuted to life imprisonment,
25 that person shall not be eligible for any form of parole or early release administered by
26 the State Board of Pardons and Paroles until that person has served a minimum of 25
27 years in prison. The minimum term of imprisonment shall not be reduced by any earned
28 time, early release, work release, leave, or other sentence-reducing measures under
29 programs administered by the Department of Corrections.

30 (3) Any sentence imposed for the first conviction of any serious violent felony other than
31 a sentence of life imprisonment or life without parole or death shall be served in its
32 entirety as imposed by the sentencing court and shall not be reduced by any form of
33 parole or early release administered by the State Board of Pardons and Paroles or by any
34 earned time, early release, work release, leave, or other sentence-reducing measures under
35 programs administered by the Department of Corrections, the effect of which would be
36 to reduce the period of incarceration ordered by the sentencing court.

(d) For purposes of this Code section, a first conviction of any serious violent felony means that the person has never been convicted of a serious violent felony under the laws of this state or of an offense under the laws of any other state or of the United States, which offense if committed in this state would be a serious violent felony. Conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction."

SECTION 7.

Said title is further amended by adding a new Code section to follow Code Section 17-10-6.1, relating to punishment for serious violent offenders, to read as follows:

"17-10-6.2.

(a) As used in this Code section, the term 'sexually violent offense' means rape, aggravated sodomy, aggravated sexual battery, or aggravated child molestation, unless subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4.

(b) At any time after the filing of an indictment for a sexually violent offense, but not later than the arraignment, the state shall notify the defendant of its intention to seek the enhanced penalties authorized by subsection (f) of this Code section. The notice shall be in writing and shall allege the specific statutory aggravating factors as specified in subsection (e) of this Code section.

(c) In a case where notice has been given pursuant to subsection (b) of this Code section, the trier of fact shall initially determine the defendant's guilt on the charge or charges. If the trier of fact finds the defendant guilty of such a charge or charges, the trial shall immediately be recommenced to receive evidence relevant to determining the existence of any aggravating circumstances as set forth in the notice given. The trial shall resume before the jury that heard the case unless the defendant waives the right to a trial by jury for purposes of sentencing pursuant to this Code section. The hearing shall be conducted in the same manner as provided in Code Section 17-10-2. The trier of fact shall consider the statutory aggravating circumstances and any mitigating circumstances.

(d) The judge, in charging the jury at the conclusion of the sentencing hearing, shall include in the instructions to the jury any mitigating circumstances or aggravating circumstances otherwise authorized by law and the statutory aggravating circumstances set forth in subsection (e) of this Code section which may be supported by the evidence. The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of enhanced sentencing, shall designate in writing, signed by the

foreperson of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in subsection (e) of this Code section is so found, the enhanced penalties shall not be imposed.

(e) Aggravating circumstances include evidence that:

- (1) The victim was less than 13 years of age;
- (2) The victim was related to the defendant by blood, marriage, or adoption;
- (3) The victim was in a fiduciary relationship with the defendant;
- (4) The victim was in the custody or control of the defendant;
- (5) There were threats of torture or violence made to the victim;
- (6) There were previous threats of violence made to the victim;
- (7) The victim was held against his or her will or was kidnapped;
- (8) The victim or the victim's family was stalked before or after the defendant was arrested;
- (9) The defendant used the Internet to lure, attract, or identify the victim;
- (10) The defendant used any method of communication to harass or intimidate the victim or the victim's family, including, but not limited to, the telephone, Internet, or mail;
- (11) The defendant was using controlled substances or marijuana during the commission of the crime;
- (12) The defendant intentionally inflicted serious physical harm to the victim. 'Physical harm' means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery or any physical injury that results in death;
- (13) The sexually violent offense occurred while the defendant was engaged in the commission of burglary;
- (14) The sexually violent offense was committed for the purpose of facilitating prostitution;
- (15) The sexually violent offense was committed for the purpose of permitting the victim to engage in sexually explicit conduct for the purpose of producing a visual medium depicting such conduct;
- (16) The defendant was in an authoritative, supervisory, or disciplinary relationship with the victim, including, but not limited to, the defendant's capacity as a teacher, minister, probation officer, parole officer, or a law enforcement officer involved with the victim, if the offense occurred while the defendant was actually or ostensibly performing his or her job; or
- (17) The defendant had previously been convicted of a serious violent felony as such term is defined in Code Section 17-10-6.1.

(f) If the trier of fact determines beyond a reasonable doubt that one or more of the aggravating circumstances occurred, the judge shall enhance the sentence imposed as follows:

(1) The defendant shall be subject to involuntary civil commitment pursuant to Chapter 11 of Title 37; and

(2) The defendant may imprisoned for life and shall not be eligible for any form of parole or early release until the defendant has served at least 90 percent of the sentence imposed by the sentencing court."

SECTION 8.

Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by adding a new Chapter 11 to read as follows:

"CHAPTER 11

37-11-1.

The General Assembly intends that persons who are subject to the civil commitment procedure for sexually violent predators under this chapter be subject to the procedures established in this chapter.

37-11-2.

As used in this chapter, the term:

(1) 'Agency with jurisdiction' means the agency that releases, upon lawful order or authority, a person who is serving a sentence in the custody of the Department of Corrections or a person who was involuntarily committed to the custody of the department upon an adjudication of not guilty by reason of insanity.

(2) 'Convicted of a sexually violent offense' means a person who has been:

(A) Adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere; or

(B) Adjudicated not guilty by reason of insanity of a sexually violent offense.

(3) 'Likely to engage in acts of sexual violence' means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others if such person is released unconditionally.

(4) 'Mental abnormality' means a mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

(5) 'Multidisciplinary team' shall include, but is not limited to, two psychiatrists, two psychologists, or one psychiatrist and one psychologist.

(6) 'Person' means an individual 18 years of age or older who is a potential or actual subject of proceedings under this chapter.

(7) 'Psychiatrist' means a physician who is certified as a Diplomat in Psychiatry by the American Board of Psychiatry and Neurology or who has completed three years of an approved residency training program in psychiatry and has had two years of full-time practice in this specialty.

(8) 'Sexually violent offense' means:

(A) Rape, aggravated sodomy, aggravated sexual battery, or aggravated child molestation unless subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4; or

(B) Any conviction for a felony offense in effect at any time before July 1, 2006, which is comparable to a sexually violent offense under subparagraph (A) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense.

(9) 'Sexually violent predator' means any person who:

(A) Has been convicted of a sexually violent offense; and

(B) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(10) 'Total confinement' means that the person is currently being held in any physically secure facility being operated or contractually operated for the Department of Corrections, the department, or the division. A person shall also be deemed to be in total confinement for applicability of provisions under this chapter if the person is serving an incarcerative sentence under the custody of the Department of Corrections and is being held in any other secure facility for any reason.

37-11-3.

(a) The agency with jurisdiction over a person who has been convicted of a sexually violent offense shall provide the multidisciplinary team with the following information:

(1) The person's name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person's offense history;

1 (2) The person's criminal history, including police reports; victim statements;
2 presentence investigation reports; postsentence investigation reports, if available; and any
3 other documents containing facts of the person's criminal incidents;

4 (3) The person's mental health, mental status, and medical records, including all clinical
5 records and notes concerning the person;

6 (4) Documentation of institutional adjustment of and any treatment received by the
7 person; and

8 (5) If the person was returned to custody after a period of supervision, documentation of
9 adjustment during supervision and any treatment received.

10 (b) The agency with jurisdiction shall give written notice to:

11 (1) The multidisciplinary team and a copy to the prosecuting attorney of the circuit where
12 the person was last convicted of a sexually violent offense;

13 (2) The multidisciplinary team and a copy to the prosecuting attorney of the circuit
14 where the person was last convicted of any offense in this state if the person has never
15 been convicted of a sexually violent offense in this state but has been convicted of a
16 sexually violent offense in another state or in federal court; or

17 (3) The multidisciplinary team and a copy to the prosecuting attorney of the circuit
18 where the person plans to reside upon release or, if no residence in this state is planned,
19 the prosecuting attorney in the circuit where the facility from which the person to be
20 released is located if the person is being confined in this state pursuant to interstate
21 compact and has a prior or current conviction for a sexually violent offense.

22 (c) Except as provided in Code Section 37-11-5, the written notice shall be given:

23 (1) At least 545 days prior to the anticipated release from total confinement of a person
24 serving a sentence in the custody of the Department of Corrections, except that in the case
25 of persons who are totally confined for a period of less than 545 days, written notice shall
26 be given as soon as practicable; or

27 (2) At least 180 days prior to the anticipated hearing regarding possible release of a
28 person committed to the custody of the department who has been found not guilty by
29 reason of insanity of a sexually violent offense.

30 (d) Within 180 days after receiving notice, there shall be a written assessment as to
31 whether the person meets the definition of a sexually violent predator followed by a written
32 recommendation, which shall be provided to the prosecuting attorney by the department
33 and shall include the written report of the multidisciplinary team.

34 (e) The provisions of this Code section shall not be jurisdictional, and failure to comply
35 with such provisions shall not prevent the prosecuting attorney from proceeding against a
36 person otherwise subject to the provisions of this chapter.

1 37-11-4.

2 (a) The commissioner or his or her designee shall establish a multidisciplinary team or
3 teams.

4 (b) The multidisciplinary team shall assess and evaluate each person referred to such team.
5 The assessment and evaluation shall include a review of the person's institutional history
6 and treatment record, if any; the person's criminal background; and any other factor
7 relevant to determining whether such person is a sexually violent predator.

8 (c) Before recommending that a person meets the definition of a sexually violent predator,
9 the multidisciplinary team shall offer the person a personal interview. If the person agrees
10 to participate in a personal interview, at least one member of the multidisciplinary team
11 who is a licensed psychiatrist or psychologist shall conduct a personal interview of the
12 person. If the person refuses to fully participate in a personal interview, the
13 multidisciplinary team may proceed with its recommendation without a personal interview
14 of the person.

15 (d) The Attorney General shall serve as legal counsel to the multidisciplinary team.

16 37-11-5.

17 (a) If the anticipated release from total confinement of a person who has been convicted
18 of a sexually violent offense becomes immediate for any reason, the agency with
19 jurisdiction shall upon immediate release from total confinement transfer that person to the
20 custody of the department to be held in an appropriate secure facility.

21 (b) Within 72 hours after transfer, the multidisciplinary team shall assess whether the
22 person meets the definition of a sexually violent predator. If the multidisciplinary team
23 determines that the person does not meet the definition of a sexually violent predator, that
24 person shall be immediately released. If the multidisciplinary team determines that the
25 person meets the definition of a sexually violent predator, the team shall provide the
26 prosecuting attorney, as designated in Code Section 37-11-3, with its written assessment
27 and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend
28 or holiday, within the next working day thereafter.

29 (c) Within 48 hours after receipt of the written assessment and recommendation from the
30 multidisciplinary team, the prosecuting attorney, as designated in Code Section 37-11-3,
31 may file a petition with the superior court alleging that the person is a sexually violent
32 predator and stating facts sufficient to support such allegation. No fee shall be charged for
33 the filing of such petition. If a petition is not filed within 48 hours after receipt of the
34 written assessment and recommendation by the prosecuting attorney, the person shall be
35 immediately released. If a petition is filed pursuant to this Code section and the judge

1 determines that there is probable cause to believe that the person is a sexually violent
2 predator, the judge shall order that the person be maintained in custody and held in an
3 appropriate secure facility for further proceedings in accordance with this chapter.

4 (d) The provisions of this Code section shall not be jurisdictional, and failure to comply
5 with the time limitations, which results in the release of a person who has been convicted
6 of a sexually violent offense, shall not be dispositive of the case and shall not prevent the
7 prosecuting attorney from proceeding against a person otherwise subject to the provisions
8 of this chapter.

9 37-11-6.

10 (a) When the prosecuting attorney files a petition seeking to have a person declared a
11 sexually violent predator, the judge shall determine whether probable cause exists to
12 believe that the person named in the petition is a sexually violent predator. If the judge
13 determines that there is probable cause to believe that the person is a sexually violent
14 predator, the judge shall order that the person remain in custody and be immediately
15 transferred to an appropriate secure facility if the person's incarcerative sentence expires.

16 (b) Upon the expiration of the incarcerative sentence and before the release from custody
17 of a person whom the multidisciplinary team recommends for civil commitment, but after
18 the prosecuting attorney files a petition pursuant to Code Section 37-11-5, the court may
19 conduct an adversarial probable cause hearing if it determines such hearing is necessary.
20 Such hearing shall be considered only in cases where the failure to begin a trial is not the
21 result of any delay caused by the respondent. The person shall be provided with notice of,
22 and an opportunity to appear in person at, an adversarial hearing. At such hearing, the
23 judge shall:

24 (1) Receive evidence and hear argument from the person and the prosecuting attorney;
25 and

26 (2) Determine whether probable cause exists to believe that the person is a sexually
27 violent predator.

28 (c) At the adversarial probable cause hearing, the person shall have the right to:

29 (1) Be represented by counsel;

30 (2) Present evidence;

31 (3) Cross-examine any witnesses who testify against the person; and

32 (4) View and copy all petitions and reports in the court file.

33 (d) If the court again concludes that there is probable cause to believe that the person is
34 a sexually violent predator, the court shall order that the person be held in an appropriate
35 secure facility upon the expiration of his or her incarcerative sentence.

(e) After a court finds probable cause to believe that the person is a sexually violent predator, the person shall be held in custody in a secure facility without opportunity for pretrial release or release during the trial proceedings.

37-11-7.

(a) The department may contract with a private entity or state agency for use of and operation of facilities to comply with the requirements of this chapter. The department may also contract with the Department of Administrative Services to issue a request for proposals and monitor contract compliance for these services.

(b) The department may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to persons civilly committed pursuant to this chapter.

(c) The department may develop and propose for consideration by the General Assembly a system of procedures for intermediate levels of civil commitment that are less restrictive than the civil commitment provided by this chapter; provided, however, that no such system shall become effective except as may be provided by general law.

37-11-8.

(a) In all civil commitment proceedings for sexually violent predators under this chapter, the following shall apply:

(1) The Georgia Rules of Civil Procedure apply unless otherwise specified in this chapter;

(2) The Georgia Rules of Evidence apply unless otherwise specified in this chapter;

(3) The psychotherapist-patient privilege under Code Section 24-9-21 or 24-9-40 shall neither exist nor apply for communications relevant to an issue in proceedings to involuntarily commit a person under this chapter;

(4) The court may consider evidence of prior behavior by a person who is subject to proceedings under this chapter if such evidence is relevant to proving that the person is a sexually violent predator;

(5) Hearsay evidence, including reports of a member of the multidisciplinary team or reports produced on behalf of the multidisciplinary team, shall be admissible in proceedings under this chapter unless the court finds that such evidence is not reliable.

In a trial, however, hearsay evidence may not be used as the sole basis for committing a person under this chapter;

(6) Rules adopted under Code Section 37-11-24 shall not constitute:

(A) An evidentiary predicate for the admission of any physical evidence or testimony;

(B) A basis for excluding or otherwise limiting the presentation of any physical evidence or testimony in judicial proceedings under this chapter; or

(C) Elements of the cause of action that the state needs to allege or prove in judicial proceedings under this chapter; and

(7) If the person who is subject to proceedings under this chapter refuses to be interviewed by or fully cooperate with members of the multidisciplinary team or any state mental health experts, the court may, in its discretion:

(A) Order the person to allow members of the multidisciplinary team and any state mental health experts to review all mental health reports, tests, and evaluations by the person's mental health expert or experts; or

(B) Prohibit the person's mental health experts from testifying concerning mental health tests, evaluations, or examinations of the person.

(b) The failure of any party to comply with the rules as set forth in this Code section shall not constitute a defense in any judicial proceedings under this chapter.

37-11-9.

(a) Within 30 days after the determination of probable cause, the court shall conduct a trial to determine whether the person is a sexually violent predator.

(b) The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced.

(c) At all adversarial proceedings under the provisions of this chapter, the person subject to such provisions shall be entitled to the assistance of counsel, and, if the person is indigent, the court shall appoint the public defender or, if a conflict exists or a public defender's office is not established in the circuit, other counsel to assist the person.

(d) If the person is subjected to a mental health examination under this chapter, the person also may retain experts or mental health professionals to perform an examination. If the person wishes to be examined by a professional of the person's own choice, the examiner shall be provided reasonable access to the person, as well as to all relevant medical and mental health records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether such an examination is necessary. If the court determines that an examination is necessary, the court shall appoint a mental health professional and determine the reasonable compensation for the professional's services, which shall be paid by the state.

(e) The person or the prosecuting attorney has the right to demand that the trial be before a jury of 12 members. A demand for a jury trial shall be filed, in writing, at least five days before the trial. If no such demand is made, the person shall be tried before the court.

37-11-10.

(a) The court or the jury shall determine beyond a reasonable doubt whether the person is a sexually violent predator. If the determination is made by the jury, the verdict shall be unanimous. If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within 45 days of the date of the mistrial unless the prosecuting attorney earlier moves to dismiss the petition. The retrial may be continued upon the request of either party upon a showing of good cause in accordance with subsection (b) of Code Section 37-11-9. In no event shall a person be released from confinement prior to retrial or dismissal of the case. The determination that a person is a sexually violent predator may be appealed.

(b) If the court or the jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the department for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this chapter shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this chapter.

(c) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. If the public defender is unable to represent the person on appeal due to a conflict or if a public defender office is not established for the circuit, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this chapter shall be waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds that are appropriated for such purposes.

37-11-11.

(a) The mental health of a person committed under this chapter shall be examined once every year or more frequently at the court's discretion. The person may retain or, if the

1 person is indigent and so requests, the court may appoint, a qualified professional to
2 examine the person. Such a professional shall have access to all records concerning the
3 person. The results of the examination shall be provided to the court that committed the
4 person under this chapter. Upon receipt of the report, the court shall conduct a review of
5 the person's status.

6 (b) The department shall provide the person with annual written notice of the person's
7 right to petition the court for release over the objection of the director of the facility where
8 the person is housed. The notice shall contain a waiver of rights. The director of the
9 facility shall forward the notice and waiver form to the court.

10 (c) The court shall hold a limited hearing to determine whether there is probable cause to
11 believe that the person's condition has so changed that it is safe for the person to be at large
12 and that the person will not engage in acts of sexual violence if discharged. The person has
13 the right to be represented by counsel at the probable cause hearing, but the person is not
14 entitled to be present. If the court determines that there is probable cause to believe it is
15 safe to release the person, the court shall set a trial before the court on the issue.

16 (d) At the trial before the court, the person is entitled to be present and is entitled to the
17 benefit of all constitutional protections afforded the person at the initial trial, except for the
18 right to a jury. The prosecuting attorney shall represent the state and has the right to have
19 the person examined by professionals chosen by the state. At the hearing, the state bears
20 the burden of proving, beyond a reasonable doubt, that the person's mental condition
21 remains such that it is not safe for the person to be at large and that, if released, the person
22 is likely to engage in acts of sexual violence.

23 37-11-12.

24 (a) Any person subjected to restricted liberty as a sexually violent predator pursuant to this
25 chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any
26 actions taken or orders made, other than as specifically provided in this chapter.

27 (b) Any person committed pursuant to this chapter has the right to adequate care and
28 individualized treatment. The department shall keep records detailing all medical, expert,
29 and professional care and treatment received by a committed person and shall keep copies
30 of all reports of periodic examinations made pursuant to this chapter. All such records and
31 reports shall be made available upon request only to the committed person, his or her
32 attorney, the prosecuting attorney, the court, or another expert or professional who, upon
33 proper showing, demonstrates a need for access to such records.

34 (c) At the time a person is taken into custody or transferred into a facility pursuant to a
35 petition under this chapter, the professional in charge of such facility or his or her designee

1 shall take reasonable precautions to inventory and safeguard the personal property of the
2 persons detained or transferred. A copy of the inventory, signed by the staff member, shall
3 be given to the person detained and shall be open to inspection to any responsible relative,
4 subject to limitations, if any, specifically imposed by the detained person. For purposes of
5 this subsection, 'responsible relative' includes the guardian, conservator, attorney, spouse,
6 parent, adult child, or adult sibling of the person. The facility shall not disclose the
7 contents of the inventory to any other person without consent of the person or order of the
8 court.

9 (d) Nothing in this chapter shall prohibit a person presently committed from exercising a
10 right presently available to him or her for the purpose of obtaining release from
11 confinement, including the right to petition for a writ of habeas corpus pursuant to Code
12 Section 37-11-16.

13 37-11-13.

14 (a) If the commissioner or the commissioner's designee at any time determines that the
15 person is not likely to commit acts of sexual violence if discharged, the commissioner or
16 the commissioner's designee shall authorize the person to petition the court for release.
17 The petition shall be served upon the court and the prosecuting attorney. The court, upon
18 receipt of such a petition, shall order a trial before the court within 30 days, unless
19 continued for good cause.

20 (b) The prosecuting attorney shall represent the state and has the right to have the person
21 examined by professionals of the prosecuting attorney's choice. The state bears the burden
22 of proving, beyond a reasonable doubt, that the person's mental condition remains such that
23 it is not safe for the person to be at large and that, if released, the person is likely to engage
24 in acts of sexual violence.

25 37-11-14.

26 A person is not prohibited from filing a petition for discharge at any time after commitment
27 under this chapter. However, if the person has previously filed such a petition without the
28 approval of the commissioner or the commissioner's designee and the court determined that
29 the petition was without merit, a subsequent petition shall be denied unless the petition
30 contains facts upon which a court could find that the person's condition has so changed that
31 a probable cause hearing is warranted.

32 37-11-15.

(a) In order to protect the public, relevant information and records that are otherwise confidential or privileged shall be released to the agency with jurisdiction, to a multidisciplinary team, or to the prosecuting attorney for the purpose of meeting the notice requirements of this chapter and determining whether a person is or continues to be a sexually violent predator. A person, agency, or entity receiving confidential information under this Code section shall not subject such information to public inspection or disclosure as permitted under Article 4 of Chapter 18 of Title 50 and shall maintain the confidentiality of that information. Such information shall not lose its confidential status by release under this Code section.

(b) Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements that have been submitted to the court or admitted into evidence under this chapter shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

37-11-16.

(a)(1) At any time after exhausting all administrative remedies, a person held in a secure facility under this chapter may file a petition for habeas corpus in the superior court for the county in which the facility is located alleging that:

(A) The person's conditions of confinement violate a statutory right under state law or a constitutional right under the Georgia Constitution or the United States Constitution; or

(B) The facility in which the person is confined is not an appropriate secure facility, as that term is used in Code Section 37-11-6.

(2) Upon filing a legally sufficient petition stating a prima-facie case under subsection (a) of this Code section, the court may direct the department to file a response. If necessary, the court may conduct an evidentiary proceeding and issue an order to correct a violation of state or federal rights found to exist by the court. A final order entered under this Code section may be appealed to the Court of Appeals. An appeal by the department shall stay the trial court's order until disposition of the appeal.

(b) Any claim referred to in subsection (a) of this Code section may be asserted only as provided in this Code section. No such claim shall be considered in commitment proceedings brought under this chapter. A person shall not have a right to appointed counsel in any proceeding initiated under this Code section.

(c) Relief granted on a petition filed under this Code section shall be narrowly drawn and may not exceed that which is minimally necessary to correct, in the least intrusive manner possible, the violation of the state or federal rights of a particular petitioner. A court

1 considering a petition under this Code section shall give substantial weight to whether the
2 granting of relief would adversely impact the operation of the detention and treatment
3 facility or would adversely impact public safety.

4 (d) The court may not enter an order releasing a person from secure detention unless the
5 court expressly finds that no relief short of release will remedy the violation of state or
6 federal rights which is found to have occurred.

7 37-11-17.

8 The long-term control, care, and treatment of a person committed under this chapter shall
9 conform to constitutional requirements.

10 37-11-18.

11 The agency with jurisdiction and its officers and employees; the department and its officers
12 and employees; members of the multidisciplinary team; the prosecuting attorney and the
13 prosecuting attorney's employees; the Department of Law and its officers and employees;
14 and those involved in the evaluation, care, and treatment of sexually violent predators
15 committed under this chapter shall be immune from any civil liability for good faith
16 conduct under this chapter.

17 37-11-19.

18 This chapter applies to all persons currently in custody who have been convicted of a
19 sexually violent offense, as well as to all persons convicted of a sexually violent offense
20 and sentenced to total confinement in the future.

21 37-11-20.

22 (a) As soon as is practicable, the department shall give written notice of the release of a
23 person committed as a sexually violent predator to any victim of the committed person who
24 is alive and whose address is known to the department or, if the victim is deceased, to the
25 victim's family, if the family's address is known to the department. Failure to notify is not
26 a reason for postponement of release. As used in this Code section, the term 'victim' shall
27 have the same meaning as in Code Section 17-17-3. This Code section shall not create a
28 cause of action against the state or an employee of the state acting within the scope of the
29 employee's employment as a result of the failure to notify pursuant to this Code section.

30 (b) If a sexually violent predator who has an active or pending term of probation, parole,
31 conditional release, or other court ordered supervision is released from custody, the
32 department shall immediately notify the Department of Corrections. The State Board of

Pardons and Paroles shall also be immediately notified of any release of a sexually violent predator who has an active or pending term of parole, conditional release, or other supervision that is administered by the State Board of Pardons and Paroles.

37-11-21.

(a) A person who is held in lawful custody pursuant to a judicial finding of probable cause under Code Section 37-11-6 or pursuant to a commitment as a sexually violent predator under Code Section 37-11-9 and who escapes or attempts to escape while in such custody shall be guilty of a felony, punishable by imprisonment for not less than five nor more than 20 years.

(b) If a person who is held in custody pursuant to a finding of probable cause or commitment as a sexually violent predator escapes while in custody, the department shall immediately notify the victim in accordance Code Section 37-11-20. The prosecuting attorney that filed the petition for civil commitment of the escapee shall also be immediately notified by the department. If the escapee has an active or pending term of probation, conditional release, or other court ordered supervision, the department shall also immediately notify the Department of Corrections. The State Board of Pardons and Paroles shall also be immediately notified of an escape if the escapee has an active or pending term of parole, conditional release, or other supervision that is administered by the State Board of Pardons and Paroles.

37-11-22.

(a) Each person committed under this chapter shall upon order of the court committing the person:

(1) Disclose all revenue or assets to the department; and

(2) Pay from such income and assets, except where such income is exempt by state or federal law, all or a fair portion of the person's daily subsistence and treatment costs, based upon the person's ability to pay, the liability or potential liability of the person to the victim or the guardian or the estate of the victim, and the needs of his or her dependents.

(b)(1) Any person who is directed to pay all or a fair portion of daily subsistence and treatment costs is entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment.

(2) An order directing payment of all or a fair portion of a person's daily subsistence and treatment costs may survive against the estate of the person.

1 37-11-23.

2 The department shall be responsible for all costs relating to the evaluation and treatment
3 of persons committed to the department's custody as sexually violent predators. A county
4 shall not be obligated to fund costs for psychological examinations, expert witnesses, court
5 appointed counsel, or other costs required by this chapter. Other costs for psychological
6 examinations, expert witnesses, and court appointed counsel required by this chapter shall
7 be paid from state funds appropriated by general law.

8 37-11-24.

9 The department shall adopt rules for:

10 (1) Procedures that shall be followed by members of the multidisciplinary teams when
11 assessing and evaluating persons subject to this chapter;

12 (2) Education and training requirements for members of the multidisciplinary teams and
13 professionals who assess and evaluate persons under this chapter;

14 (3) The criteria used by a multidisciplinary team to recommend to a prosecuting attorney
15 that a petition should be filed to involuntarily commit a person under this chapter. The
16 criteria shall include, but are not limited to, whether:

17 (A) The person has a propensity to engage in future acts of sexual violence;

18 (B) The person should be placed in a secure, residential facility; and

19 (C) The person needs long-term treatment and care;

20 (4) The designation of secure facilities for sexually violent predators who are subject to
21 involuntary commitment under this chapter;

22 (5) The components of the basic treatment plan for all committed persons under this
23 chapter; and

24 (6) The protocol to inform a person that he or she is being examined to determine
25 whether he or she is a sexually violent predator under this chapter.

26 37-11-25.

27 (a) Beginning January 1, 2007, the Department of Corrections shall collect information
28 and compile quarterly reports with statistics profiling inmates released the previous quarter
29 who fit the criteria and were referred to the department pursuant to this chapter. The
30 quarterly reports shall be produced beginning April 1, 2007. At a minimum, the
31 information that shall be collected and compiled for inclusion in the reports includes:

32 (1) The nature of the qualifying offense;

33 (2) The most serious sexual offense;

34 (3) The total number of distinct victims of the sexual offense;

(4) Whether the victim was known to the offender;

(5) Whether the sexual act was consensual;

(6) Whether the sexual act involved multiple victims;

(7) Whether direct violence was involved in the sexual offense;

(8) The age of each victim at the time of the offense;

(9) The age of the offender at the time of the first sexual offense;

(10) Whether a weapon was used;

(11) The length of time since the most recent sexual offense; and

(12) The total number of prior and current sexual offense convictions.

(b) In addition, the department shall implement a long-term study to determine the overall efficacy of the provisions of this chapter."

SECTION 9.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by striking in its entirety Code Section 42-9-44.2, relating to chemical treatment and counseling as a condition of parole for child molesters, and inserting in lieu thereof the following:

"42-9-44.2.

~~(a) The Board of Pardons and Paroles may in the exercise of its discretion in considering the grant of parole to a person who has been convicted of a second or subsequent offense of child molestation of a child who was 16 years of age or younger at the time of the offense or who has been convicted of a first offense of aggravated child molestation of a child who was 16 years of age or younger at the time of the offense require, as a condition of parole, that such person undergo medroxyprogesterone acetate treatment or its chemical equivalent. While undergoing such treatment, such person must participate in and pay for counseling currently available from a private or public provider of outpatient mental health services. No such treatment shall be administered until such person has consented thereto in writing.~~

~~(b) A person who is required to undergo medroxyprogesterone acetate treatment or its chemical equivalent and counseling as a condition of parole shall begin such treatment prior to his or her release from confinement in the state correctional institution or other institution, but additional treatment may continue after such defendant's release on parole until the defendant demonstrates to the board that such treatment is no longer necessary.~~

~~(c) The provision of treatment required as a condition of parole shall be administered by the State Board of Pardons and Paroles through licensed medical personnel employed by the defendant and approved by the board. Any physician or qualified mental health~~

~~professional who acts in good faith in compliance with the provisions of this Code section in the administration of treatment or provision of counseling provided for in this Code section shall be immune from civil or criminal liability for his or her actions in connection with such treatment. The Department of Corrections shall permit access by such licensed medical personnel for such purpose to any person required to begin the treatment and counseling while confined in a facility of the department. The medical personnel utilized or approved by the board shall be required to inform the person about the effect of hormonal chemical treatment and any side effects that may result from it. A person subject to treatment under this Code section shall acknowledge in writing the receipt of this information. Reserved."~~

SECTION 10.

(a) This Act shall become effective July 1, 2006. OR

(a) This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific reference to this Act and when funds so appropriated become available for expenditure.

(b) The provisions of this Act shall not affect or abate the status as a crime of any such act or omission which occurred prior to the effective date of the Act repealing, repealing and reenacting, or amending such law, nor shall the prosecution of such crime be abated as a result of such repeal, repeal and reenactment, or amendment.

SECTION 11.

All laws and parts of laws in conflict with this Act are repealed.